

<b>SOLICITATION, OFFER, AND AWARD</b> (Construction, Alteration, or Repair)		1. Solicitation No. DE-FB65-10WG85330	2. Type of Solicitation <input checked="" type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Negotiated (RFP)	3. Date Issued March 5, 2010	Page of Pages 1 of 37
IMPORTANT – The "offer" section on the reverse must be fully completed by offeror.					
4. Contract No. DE-AC65-10WG85330		5. Requisition/Purchase Request No. 85330		6. Project No.	
7. Issued By U.S. DEPT OF ENERGY WESTERN AREA POWER ADMIN 615 S 43rd AVENUE PHOENIX, AZ 85009-5313		Code G1500		8. Address Offer to U.S. DEPT OF ENERGY WESTERN AREA POWER ADMIN 615 S 43rd AVENUE PHOENIX, AZ 85009-5313	
Code G1500		Code G1500			
9. For Information Call:	A. Name Wynona N. Rath		B. Telephone No. (Include area code) (No Collect Calls) (602) 605-2874 rath@wapa.gov		
<b>SOLICITATION</b>					
<b>NOTE: In sealed bid solicitation "offer" and "offeror" mean "bid" and "bidder"</b>					

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS: (Title, Identifying No., Date)

## Olinda-Maxwell 230-kV Transmission Line Optical Ground Wire Installation and Tower Modifications

Estimated value is between \$1,000,000 and \$5,000,000

NOTE: Western Construction Standards and Drawing apply. These are available for download at:  
<http://www.wapa.gov/business/buys.htm>

THIS AWARD IS BEING ISSUED PURSUANT TO THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

11. The Contractor shall begin performance within 10 calendar days and complete it within 180 calendar days after receiving the <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See FAR 52.211-10 in Section F)	
12A. The Contractor must furnish any required performance and payment bonds? (If "YES", indicate within how many calendar days after award in item 12B.) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	12B. Calendar Days  2
13. Additional Solicitation Requirements:	
A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by 12:00 PM (hour) local time 04/06 /2010. If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
B. An offer guarantee <input checked="" type="checkbox"/> is <input type="checkbox"/> is not required.	
C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

**OFFER (Must be fully completed by offeror)**

14. Name and Address of Offeror (Include ZIP Code)

15. Telephone No. (Include area code)

16. Remittance Address (Include only if different than Item 14)

Code

Facility Code

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in item 13D.

**AMOUNTS**

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGEMENT OF AMENDMENTS**

(The offeror acknowledges receipt of amendment to the solicitation - give number and date of each)

AMENDMENT  
No.

DATE

20A. NAME, TITLE OF PERSON AUTHORIZED TO SIGN  
OFFER (Type or Print)

20B. SIGNATURE

20C. OFFER DATE

**AWARD (to be completed by Government)**

21. ITEM(S) ACCEPTED

22. Amount  
\$

23. Accounting and Appropriation Data

24. Submit Invoices to Address shown in  
(4 copies unless otherwise specified)

Item

26

25. Other Than full and open competition pursuant to

☐

10 U.S.C. 2304(c) ( )

☐

41 U.S.C 253 (c) (2)

26. Administered by  
U.S. Department of Energy  
Western Area Power Administration  
Desert Southwest Region  
P.O. Box 6457, ATTN: G5600  
Phoenix, AZ 85005-6457

27. Payment will be made by:  
WESTERN AREA POWER ADMINISTRATION  
ACCOUNTS PAYABLE -A8210  
P.O. BOX 281111  
LAKEWOOD, CO 80228-8111

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing office) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.)

Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. Name and Title of Contractor or Person authorized to sign (Type or print)

31A. Name of Contracting Officer (Type or Print)  
Byron D. McCollum

30B. Signature

30C. Date

31B. United States of America

31C. Award Date

By

## Supplies or Services and Prices/Costs

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
0001	Mobilization and preparatory work	1	LS		
0002	Removing steel strand overhead ground wire	1	LS		
0003	Demolition	1	LS		
0004	Concrete pull boxes and duct bank	1	LS		
0005	Fiber optic ground wire peaks	196,357	LBS		
0006	Associated and miscellaneous substation electrical equipment and material	1	LS		
0007	Furnishing and installing fiber optics	1	LS		
	Furnishing and installing overhead optical ground wire assemblies for:				
0008	Tension – type OPGW-TV	29	EA		
0009	Suspension – type OPGW-SP	358	EA		
0010	Furnishing and installing one 0.465-inch diameter, 24-fiber overhead optical ground wire	82.1	MI		
0011	Transmission line splice boxes complete with splices	1	LS		
0012	Stockbridge-type vibration dampers for 0.465-inch diameter, overhead optical ground wire	1	LS		
0013	Spare parts	1	LS		
Total					\$

UNIT ABBREVIATIONS: LS = Lump Sum

EA = each

LBS = Pounds

MI = Miles

**SECTION C**  
**DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**DOE-C-1004 SPECIFICATIONS**

The Specifications are Attachment \_ listed in Section J or can be accessed at the following site: <http://www.wapa.gov/business/buys.htm>.

**DOE-C-1005 DRAWINGS**

The Drawings are Attachment \_ located in Section J or can be accessed at the following site: <http://www.wapa.gov/business/buys.htm>.



**SECTION E**  
**INSPECTION AND ACCEPTANCE**

**DOE-E-1001 INSPECTION AND ACCEPTANCE**

Inspection and acceptance of all items under this contract shall be accomplished by the Contracting Officer, the Contracting Officer's Representative (COR), or any other duly authorized Government representative identified by the Contracting Officer. The contractor will be notified in writing or by a copy of the delegation of authority if a different representative is designated

**SECTION F**  
**DELIVERIES OR PERFORMANCE**

**52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)**

The Contractor shall be required to

- (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed,
- (b) prosecute the work diligently, and
- (c) complete the entire work ready for use not later than 180 days after "Notice to Proceed". The time stated for completion shall include final cleanup of the premises.

**52.211-12 LIQUIDATED DAMAGES - CONSTRUCTION (SEP 2000)**

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$1,176.92 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of Clause)

**52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

(End of Clause)

**SECTION G**  
**CONTRACT ADMINISTRATION DATA**

**WES-G-1001 CORRESPONDENCE PROCEDURES (WAPA, JAN 2008)**

a. The designated DOE contract specialist is the focal point for all non-technical matters related to this contract. The DOE contract specialist for this contract is:

Contract Specialists Name: Wynona N. Rath  
Telephone: 605-602-2874  
U.S. Department of Energy  
Western Area Power Administration  
Desert Southwest Region  
615 S. 43<sup>rd</sup> Ave.  
P.O. Box 6457  
Phoenix, AZ 85005-6457

b. All correspondence submitted under this contract shall reference the contract number.

c. One copy of all correspondence related to this contract shall be sent to each of the following:

1. The DOE Contract Specialist
2. The DOE Contracting Officer
3. The DOE Contracting Officer's Representative (COR)
4. The DOE Patent Counsel (only if patent or technical data issues are involved)

d. If a Government Contract Administration Office (CAO) other than DOE has been designated for this contract, a copy of all correspondence shall also be sent to the Government CAO. The assigned CAO, if any, is designated on the form used to award this contract.

**WES-G-1002 ADMINISTRATIVE TIME FOR COMPLETION OF DRAWINGS (WAPA, JAN 2008)**

a. The contractor is authorized up to 60 calendar days after the contract completion date to complete and submit final drawings, operation and maintenance manuals, and any other data required by the contract.

b. This period noted above is strictly for administrative purposes and is not an extension of the actual performance period of the contract. Liquidated damages are not applicable to this period.

**WES-G-1005 CONTRACTOR'S CONTRACT ADMINISTRATION (WAPA, FEB 2008)**

The name, title, phone number, office name, and complete mailing address of the Contractor's point of contact for contract administration, including defective or improper invoices, is as follows:

Name:_____	Title:_____
Phone Number:_____	E-mail address:_____
Fax Number:_____	Company Name:_____
Address:_____	City/State/Zip:_____



**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

**DOE-H-1022 PROTECTION OF TRAFFIC**

**TRAFFIC INTERFERENCE:**

The Contractor shall conduct his operations so as to interfere as little as possible with the use of existing roads at or near locations where the work is being performed. When it is necessary to excavate a trench across an existing road, store materials thereon, or perform other work which would obstruct traffic, notification of the start of such work or storage of materials, and details of the proposed methods of providing the required facilities for safe and continuous use of roads shall be submitted to the Contracting Officer for approval at least 48 hours in advance thereof; and the Contractor shall, at his own expense, make such approved temporary provisions as are required to maintain at least one lane of traffic by bridging the excavation, providing ramps over surface obstructions, or providing a suitable temporary by-pass around the construction.

**BARRICADES, BY-PASSES, AND WARNING SIGNS:**

The Contractor will be required as a part of this contract to provide and erect, before construction begins, and maintain during the progress of construction, substantial barricades bridging over trenches, ramps, sidewalks, guard rails, and warning signs; furnish, place, and maintain adequate lights and warning signals; and provide flagmen and watchmen; which safeguards shall be provided as directed by the Contracting Officer where and as may be necessary to protect pedestrian and vehicular traffic. All such barricades and/or temporary bridging or other temporary construction shall be removed by the Contractor upon completion of the work necessitating the erection thereof.

**DOE-H-1023 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS**

(a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.

(b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected except for management programs approved by the Contracting Officer.

(c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

**DOE-H-1024 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

(a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree that in the event of a dispute to jointly select a "standing neutral." The standing neutral will be available to help resolve disputes as they arise. Such standing neutral can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a standing neutral cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. Specific joint ADR processes shall be developed.

(b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:

(1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within



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30 days after the start of negotiations, then such disagreement shall be referred to the standing neutral, pursuant to the jointly-developed ADR procedures.

(2) The standing neutral will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the standing neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.

(c) If one party to this Contract requests the use of the process set forth in Paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim under the Section I, FAR 52.233-1 Disputes or FAR 52.233-1 Disputes Alternate I, it must do so within 30 days of receipt of the written position from the other party.

**DOE-H-1025 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND / OR GOVERNMENT EMPLOYEES**

The Government may undertake or award contracts for work or services. The Contractor shall cooperate fully with all other on site DOE Contractors, and with Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by a Government employee.

**WES-H-1002 RETAINAGE/HOLDBACK FOR UNDELIVERED DATA (WAPA, APR 2009)**

The Government may retain/holdback up to 10% of the total contract value and final payment will not be made until all final drawings, as-builts, operation and maintenance manuals, and any other data required under the contract have been delivered to and accepted by the Government.

**WES-H-1007 BREAKDOWN OF CONTRACT PRICES (WAPA, FEB 2008)**

In addition to the requirements of the contract clause entitled "Payments under Fixed Price Construction Contracts", the contractor shall submit a detailed breakdown of the total contract price within 30 calendar days after the date of the notice to proceed. The price breakdown shall be submitted in triplicate to the Contracting Officer's Representative (COR) designated in this contract. The breakdown of contract costs shall be arranged by bid item with a further, more detailed division into the various kinds of work which make up the bid item. Contract costs shall be furnished for each bid item detailing the various kinds of work covered in the technical paragraphs of the specifications. The cost breakdown shall show the quantities of each type of work, the unit prices for materials, labor, and equipment, as well as the total price. The contractor shall obtain cost information from its subcontractor(s) as required, to provide the Government with a complete breakdown of the actual bid price.

**WES-H-1009 RIGHT TO USE AND OPERATE UNSATISFACTORY EQUIPMENT (WAPA, FEB 2008)**

After installation of the equipment being purchased under this contract, if the operating parameters, materials, or equipment furnished by the contractor fail to comply with the specifications contained in this contract, the Government shall have the right to use the materials and/or operate the equipment until the defects, errors, or omissions can be corrected.

**WES-H-1011 CHANGE ORDER ACCOUNTING (WAPA, FEB 2008)**

a. The contractor shall maintain separate change order accounting records whenever the cost of a contract modification/change, or series of related changes, is expected to exceed \$ 50,000.00. The contractor shall maintain separate accounting records for each contract modification/change using appropriate accounting procedures for all segregable, incurred costs for work allocable to each change.

b. The contractor shall maintain these records until the Government and the contractor agree to an equitable adjustment for the changes ordered by the



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**SPECIAL CONTRACT REQUIREMENTS**

Contracting Officer, or until the matter is conclusively disposed of in accordance with the Disputes clause.

**WES-H-1024 LOBBYING RESTRICTIONS (WAPA, FEB 2008)**

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**WES-H-1025 PREFERENCE FOR PURCHASING AMERICAN-MADE EQUIPMENT AND PRODUCTS (WAPA, FEB 2008)**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

**WES-H-1031 INDEMNITY (WAPA, FEB 2008)**

The contractor shall hold harmless and indemnify the United States and its officers, representatives, and employees, from all claims, losses, damages, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of, any loss, personal injury, death, or property damage, including but not limited to incidents related to the transportation, removal, disposal, and/or accidental discharge of toxic and/or hazardous waste or material, received or sustained by any person or persons, including but not limited to the contractor, the United States, or third parties, and any of their employees, agents, officers, or representatives, to the extent caused by, growing out of, resulting from, incident to, or connected with, the contractor's negligent performance under this contract.

**WES-H-1032 REQUIRED INSURANCE (WAPA, FEB 2008)**

a. The contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:

(1) Workman's Compensation Insurance in accordance with the laws of the state where contract performance occurs; Occupational Disease Coverage; and Employees Liability Coverage.

(2) Comprehensive General and Automobile Liability Insurance with the following minimum coverages:

(i) GENERAL LIABILITY

(A) Bodily Injury \$500,000 per occurrence.

(B) Property Damage \$500,000 each accident; \$1,000,000 in the aggregate.

(ii) AUTOMOBILE INSURANCE

(A) Bodily Injury, \$200,000 per person;

\$500,000 per occurrence.

(B) Property Damage, per occurrence: \$200,000.

b. These policies shall have appropriate language waiving all subrogation rights against the Government, unless otherwise approved by the Contracting Officer.

c. Prior to the commencement of work under this contract, the contractor shall furnish a copy of the insurance certificate (binder) or other objective evidence of the above-required insurance to the Contracting Officer. The policies shall contain an endorsement to the effect that cancellation or any material change in the insurance policies that adversely affect the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed, and in no event less than thirty (30) days after written notification is provided to the Contracting Officer.

d. The contractor agrees to insert the substance of this clause, including this paragraph (d), into any subcontracts issued under this contract.



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**WES-H-1033 CONTRACT PRICES (WAPA, FEB 2008)**

Payment for the various line items listed in Section B shall constitute full compensation for furnishing all plant, labor, equipment, appliances and materials; for performing all operations required to complete the work in conformity with the drawings and specifications, including installation and erection of the total system; necessary engineering services; and all drawings, data and/or reports.

**WES-H-1035 PROTECTION AND RESTORATION OF REAL ESTATE CROSSED BY RIGHT-OF-WAY (WAPA, FEB 2008)**

a. General. The contractor shall limit the movement of its crews and equipment to the right-of-way, including access routes. The contractor shall further limit movement on the right-of-way so as to minimize damage to grazing land, crops, orchards, or other real and personal property, and shall avoid marring the land. The contractor shall be responsible for all damages off the right-of-way and shall settle all such damage claims directly with the property owner. Pursuant to FAR 52.236-7 "Permits and Responsibilities," the contractor shall be responsible for all damages that are a result of its fault or negligence.

b. Restoration of Land to Original Conditions. When weather and ground conditions permit, the contractor shall obliterate all contractor caused ruts that are hazardous to farming operations and to movement of equipment. Such ruts shall be leveled, filled, and graded or otherwise eliminated in an approved manner. Ruts, scars, and compacted soils in hay meadows, alfalfa fields, pastures, and cultivated productive lands shall have the soil loosened and leveled by scarifying, harrowing, disking, or other approved methods.

c. Hillside Erosion Prevention. Water turnoff bars or small terraces shall be constructed across all right-of-way trails on hillsides to prevent water erosion and to facilitate natural re-vegetation on the trails.

d. Irrigation Ditches, Drainage Ditches, Terraces, and Title Drains. The contractor shall take measures, especially during the irrigation season, to ensure that its operations do not affect the operation of irrigation and drainage ditches, terraces, and title drains, and ensure that any other irrigation features are adequately protected during contract performance.

e. Resolution of Damage Claims. The contractor shall promptly notify the property owner(s) of any damage caused by the contractor. The contractor, within 60 days of its knowledge of, or notice from, a landowner of damage off the right-of-way caused by the contractor's operations shall notify the Contracting Officer's Representative in writing of the disposition of each claim. In order to adequately protect the Government against landowner claims, demands, or liabilities arising out of the contractor's construction operations under this contract, the Contracting Officer may withhold progress payments, in whole or in part, due the contractor until landowner claims are settled.

(End of Clause)

**WES-H-1036 MOBILIZATION AND PREPARATORY WORK (WAPA, FEB 2008)**

a. General. The contractor will be compensated for mobilization and preparatory work in accordance with the terms of this contract. Mobilization and preparatory work may include movement of personnel, equipment, supplies, and incidentals to the project site; establishment of offices, buildings, plants and other facilities at the project site; payment of premiums for bonds and insurance for the project; necessary costs for acquisition of equipment; and for any other work which must be performed incident to the start of construction at the site.

b. Facilities, plants, and equipment required for this project that are established at, or brought to, the worksite are subject to the provisions of this clause unless the Contracting Officer specifically excludes, in writing, a particular item or items. The contractor is solely responsible for the adequacy, efficiency, use, protection, maintenance, repair, and preservation of all its facilities, plants, and equipment. The facilities, plants, and equipment covered by this paragraph shall not be dismantled or removed from the worksite prior to completion of the work specified in the contract without the written permission of the Contracting Officer.



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c. Termination for Default. In the event the contractor's right to proceed is terminated as provided by the contract clause entitled Default, all facilities, plants, and equipment on the worksite are subject to Western's right to take possession of and utilize the same for completion of the work. In addition, any encumbrance, lien, or other security interest on any such facilities, plants, or equipment shall be subordinate to Western's right to utilize these facilities, plants and equipment to complete the work under the contract.

d. Payment. Payment for mobilization and preparatory work will be made at the lump sum price specified in Section B of the contract. Progress payments for mobilization and preparatory work will be made as follows:

(1) When 5 percent of the total amount of the original contract is earned from other schedule items, 50 percent of the amount agreed upon for mobilization and preparatory work will be paid.

(2) When 10 percent of the total amount of the original contract is earned from other schedule items, the balance of the amount agreed upon for mobilization and preparatory work will be paid.

e. Progress payments for mobilization and preparatory work shall be subject to retainage as provided by FAR 52.232-5, "Payments Under Fixed-Price Construction Contracts." In addition, the line item for mobilization and preparatory work will not be considered to be a separate division of the work, completion of which would permit the payment of the complete item price without retention.

**WES-H-1043 FOREIGN VISITORS AND CONTRACT EMPLOYEES (WAPA, MAY 2005)**

The Contractor must receive prior, written approval from the appropriate Western Security Manager (WSM) before any non-U.S. Citizens (Foreign Nationals) visit or work at any Western Area Power Administration (Western) facility. The Contractor must certify in writing that:

1) each of their employees working under this contract that may visit or be assigned to work at any Western facility is a U.S. Citizen, or;

2) the Contractor shall provide an accurately completed Foreign National Data Card, WAPA Form 3000-72, Attachment "D" for each of their Foreign National employees that may visit or work at any Western facility. The Contractor shall forward the completed Form to the COR at least 45 days in advance of each Foreign National employee's visit or their beginning of work. Foreign National employees shall not be allowed on-site at any Western facility without prior approval of the cognizant WSM. Circumstances which do not allow a 45 day notification require prior, written approval of the cognizant WSM. The Contractor shall include this requirement in any subcontract it issues under this contract. Western reserves the right to remove any contract employee from Western's property pending the conclusion of the Foreign National background check.

**WES-H-1045 ACCESS TO DOE OWNED OR LEASED FACILITIES (WAPA, NOV 2005)**

(a) The performance of this contract requires that employees of the Contractor have physical access to DOE owned or leased facilities. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. This process includes, but is not limited to an FBI fingerprint check and other background checks and investigations as required by DOE. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:

- (1) is, or is suspected of being, a terrorist;
- (2) is the subject of an outstanding warrant;
- (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
- (4) has presented false or forged identity source documents;
- (5) has been barred from Federal employment;
- (6) is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or



**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

(7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

(b) The Contractor shall assure:

(1) In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.

(2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE owned or leased facilities and (ii) provides additional information, requested by those DOE officials.

(c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.

(d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE owned or leased facilities by the Contractor's employee(s), upon:

- (1) the termination of this Contract;
- (2) the expiration of this Contract;
- (3) the termination of employment on this Contract by an individual employee;

or

- (4) demand by DOE for return of the badge.

(e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE owned or leased facilities.

**WES-H-1050 SAFETY AND HEALTH - HIGH RISK (WAPA, MAY 2005)**

In performing the work required by this contract, the Contractor shall comply with all applicable Federal, State, or local safety, health, or industrial safety codes including the latest effective standards promulgated by the Department of Labor, Occupational Safety and Health Administration; Safety and Health Standards 29 CFR 1910, 29 CFR 1925; and the Construction Safety and Health regulations promulgated under Section 107 of the Contract Work Hours and Safety Standards Act, 29 CFR 1926. If there is a conflict between the requirements of the applicable Federal, State, or local safety, health, or industrial safety codes, the more stringent requirements shall prevail. For any cranes used in the performance of this contract, a copy of the crane inspection records shall be furnished to Western's on-site representative prior to the performance of work. The United States is liable only for negligence on the part of its employees in accordance with the Federal Tort Claims Act, as amended.

**WES-H-1051 ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (WAPA, JULY 2006)**

When the contract requires the specification or delivery of energy consuming products for use in a Federal facility, the contractor will specify or deliver ENERGYSTAR qualified products or products conforming to the Federal Energy Management Programs (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for ENERGYSTAR at <http://www.energystar.gov/products> and FEMP at

**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

[http://www.eere.energy.gov/femp/procurement/eep\\_requirements.cfm](http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm) .

**WES-H-1062 GREEN PURCHASING UNDER DOE CONSTRUCTION CONTRACTS (WAPA, JUL 2009)**

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well being of its Federal employees and contractors. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well being of Federal employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

- \* Recycled Products are described at <http://epa.gov/cpg>
- \* Biobased Products are described at <http://www.biopreferred.gov/>
- \* Energy efficient products are at <http://energystar.gov/products> for Energy Star products
- \* Energy efficient products are at <http://www.eere.energy.gov/femp/procurement> for FEMP designated products
- \* Environmentally Preferable Computers are at <http://www.epeat.net>
- \* Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>
- \* Water efficient plumbing products are at <http://epa.gov/watersense> To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor is expected that to specify the environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the use of products that have biobased content, are energy efficient, or have recycled content. In case of an apparent inconsistency between this provision and any specification elsewhere in the contract, consult the contracting officer for resolution.



**SECTION I**  
**CONTRACT CLAUSES**

**52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov>

**952.202-1 DEFINITIONS**

(Reference)

**52.202-1 DEFINITIONS (JUL 2004)**

(Reference)

**52.203-3 GRATUITIES (APR 1984)**

(Reference)

**52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(Reference)

**52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

(Reference)

**52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(Reference)

**52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(Reference)

**52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)**

(Reference)

**52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**

(Reference)

**52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)**

(Reference)

**52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)**

(Reference)

**52.214-26 AUDIT AND RECORDS - SEALED BIDDING (Mar 2009)**

(Reference)

**52.214-27 PRICE REDUCTION FOR DEFECTIVE COST AND PRICING DATA (OCT 1997)**

(Reference)

**52.214-28 SUBCONTRACTOR COST AND PRICING DATA (OCT 1997)**

(Reference)

**52.214-29 ORDER OF PRECEDENCE - SEALED BIDDING (JAN 1986)**

(Reference)

**52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005)**

(Reference)

**52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**

(Reference)

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- 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN - ALTERNATE I (OCT 2001)**  
(Reference)
- 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)**  
(Reference)
- 52.219-28 POST AWARD SMALL BUSINESS PROGRAM REPRESENTATION (APR 2009)**  
(Reference)
- 52.222-3 CONVICT LABOR (JUN 2003)**  
(Reference)
- 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION (JUL 2005)**  
(Reference)
- 52.222-6 DAVIS-BACON ACT (JUL 2005)**  
(Reference)
- 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**  
(Reference)
- 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**  
(Reference)
- 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)**  
(Reference)
- 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**  
(Reference)
- 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)**  
(Reference)
- 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)**  
(Reference)
- 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**  
(Reference)
- 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**  
(Reference)
- 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)**  
(Reference)
- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**  
(Reference)
- 52.222-26 EQUAL OPPORTUNITY (MAR 2007)**  
(Reference)
- 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**  
(Reference)
- 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. [SEP 2006]**  
(Reference)



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- 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**  
(Reference)
- 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**  
(Reference)
- 52.222-54 EMPLOYMENT VERIFICATION ELIGIBILITY (JAN 2009)**  
(Reference)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)**  
(Reference)
- 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)**  
(Reference)
- 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**  
(Reference)
- 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**  
(Reference)
- 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)**  
(Reference)
- 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)**  
(Reference)
- 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**  
(Reference)
- 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)**  
(Reference)
- 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (DEC 2007)**  
(Reference)
- 52.228-1 BID GUARANTEE (SEP 1996)**  
(Reference)
- 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)**  
(Reference)
- 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**  
(Reference)
- 52.228-11 PLEDGES OF ASSETS (FEB 1992)**  
(Reference)
- 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)**  
(Reference)
- 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)**  
(Reference)
- 52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (NOV 2006)**  
(Reference)
- 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)**  
(Reference)

**SECTION I  
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- 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)**  
(Reference)
- 52.232-17 INTEREST (OCT 2008)**  
(Reference)
- 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**  
(Reference)
- 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2008)**  
(Reference)
- 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**  
(Reference)
- 52.233-1 I DISPUTES (JUL 2002)--ALTERNATE I (DEC 1991)**  
(Reference)
- 52.233-3 PROTEST AFTER AWARD (AUG 1996)**  
(Reference)
- 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**  
(Reference)
- 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)**  
(Reference)
- 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)**  
(Reference)
- 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)**  
(Reference)
- 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)**  
(Reference)
- 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)**  
(Reference)
- 52.236-8 OTHER CONTRACTS (APR 1984)**  
(Reference)
- 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)**  
(Reference)
- 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)**  
(Reference)
- 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)**  
(Reference)
- 52.236-12 CLEANING UP (APR 1984)**  
(Reference)
- 52.236-13 ACCIDENT PREVENTION (NOV 1991)**  
(Reference)
- 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)**  
(Reference)

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**52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)**  
(Reference)

**52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)**  
(Reference)

**52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)**  
(Reference)

**52.242-13 BANKRUPTCY (JUL 1995)**  
(Reference)

**52.242-14 SUSPENSION OF WORK (APR 1984)**  
(Reference)

**52.243-4 CHANGES (JUN 2007)**  
(Reference)

**52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2009)**  
(Reference)

**52.245-1 GOVERNMENT PROPERTY (JUN 2007)**  
(Reference)

**52.245-9 USE AND CHARGES (JUN 2007)**  
(Reference)

**52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)**  
(Reference)

**52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)**  
(Reference)

**52.248-3 VALUE ENGINEERING--CONSTRUCTION (SEP 2006)**  
(Reference)

**52.249-2 I TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004)-- ALTERNATE I (SEP 1996)**  
(Reference)

**52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)**  
(Reference)

**52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**  
(Reference)

**52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)**

(a) "Definitions." As used in this clause--

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall--

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to Administrative Contracting Officer.



**SECTION I**  
**CONTRACT CLAUSES**

(End of Clause)

**52.225-9 BUY AMERICAN ACT--CONSTRUCTION MATERIALS (JAN 2005)**

(a) "Definitions." As used in this clause--

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) "Domestic preference."

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

None

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) "Request for determination of inapplicability of the Buy American Act."

(1)



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(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign

construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) "Data." To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)+
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for

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**CONTRACT CLAUSES**

suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[+ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

**52.225-10--Notice of Buy American Act Requirement--Construction Materials(Feb 2009)**

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.*

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

**52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)**

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.



**SECTION J**  
**LIST OF ATTACHMENTS**

**WES-J-1001 LIST OF ATTACHMENTS - GENERAL (WAPA, FEB 2008)**

The following list of attachments included in this solicitation will become part of the resulting contract award.

Attachment A - Project Specifications	(Volume 2)
Attachment B - Drawings & Maps	(Volume 3,2 parts)
Attachment C - Wage Determinations - CA 080009 (CA9)	(38 pages)
Attachment D - Foreign National Data Card (WAPA Form 3000-72)	(2 pages)
(This item will not become part of the contract award.)	
Attachment E - Bid Bond, Performance Bond, and Payment Bond	(6 pages)
(This item will not become part of the contract award.)	
Attachment F - Disclosure of Lobbying Activities	(3 pages)
(This item will not become part of the contract award.)	
Attachment G - Subcontracting Plan	(8 pages)
(This item will not become part of the contract award.)	



**SECTION K**  
**REPRESENTATIONS AND CERTIFICATIONS**

**52.204-8 -- Annual Representations and Certifications (Feb 2009)**

(a)

(1) The North American Industry classification System (NAICS) code for this acquisition is 237130.

(2) The small business size standard is \$33,500,000.00

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)

(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certification in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless--

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$100,000.

(iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, Central Contractor Registration.

(iv) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that--

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.



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- (x) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.
- (xi) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.
- (xii) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.
- (xiii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- (xiv) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.
- (xv) 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at 52.225-1.
- (xvi) 52.225-4, Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225- 3.
- (A) If the acquisition value is less than \$25,000, the basic provision applies.
- (B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.
- (C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.
- (xvii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.
- (xviii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification.
- (xix) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to--
- (A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and
- (B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
- (2) The following certifications are applicable as indicated by the Contracting Officer:
- [Contracting Officer check as appropriate.]
- \_\_\_ (i) 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- \_\_\_ (ii) 52.219-21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.
- \_\_\_ (iii) 52.219-22, Small Disadvantaged Business Status.
- \_\_\_ (A) Basic.
- \_\_\_ (B) Alternate I.
- \_\_\_ (iv) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.
- \_\_\_ (v) 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- \_\_\_ (vi) 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services--Certification.
- \_\_\_ (vii) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).
- \_\_\_ (viii) 52.223-13, Certification of Toxic Chemical Release Reporting.
- \_\_\_ (ix) 52.227-6, Royalty Information.
- \_\_\_ (A) Basic.
- \_\_\_ (B) Alternate I.
- \_\_\_ (x) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.



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(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov> . After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

**52.209-5 -- Certification Regarding Responsibility Matters (Dec 2008)**

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

(A) Are [ ] are not [ ] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [ ] have not [ ], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(C) Are [ ] are not [ ] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have [ ], have not [ ], within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320



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entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**52.219-19 -- Small Business Concern Representation for the Small Business Competitiveness Demonstration Program (Oct 2000)**

(a) *Definition.* "Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) *[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]* The Offeror \* is, \* is not an emerging small business.

(c) *[Complete only if the Offeror is a small business or an emerging small business, indicating its size range.]* Offeror's number of employees for the past 12 months *[check this column if size standard stated in solicitation is expressed in terms of number of employees]* or Offeror's average annual gross revenue for the last 3 fiscal years *[check this column if size standard stated*



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*in solicitation is expressed in terms of annual receipts]. [Check one of the following.]*

No. of Employees Avg. Annual Gross Revenues

\_\_\_ 50 or fewer \_\_\_ \$1 million or less  
\_\_\_ 51 -- 100 \_\_\_ \$1,000,001 -- \$2 million  
\_\_\_ 101 -- 250 \_\_\_ \$2,000,001 -- \$3.5 million  
\_\_\_ 251 -- 500 \_\_\_ \$3,500,001 -- \$5 million  
\_\_\_ 501 -- 750 \_\_\_ \$5,000,001 -- \$10 million  
\_\_\_ 751 -- 1,000 \_\_\_ \$10,000,001 -- \$17 million  
\_\_\_ Over 1,000 \_\_\_ Over \$17 million

**52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (Dec 2008)**

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have ☐, have not ☐, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.



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(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of Provision)

**52.222-38 -- Compliance With Veterans' Employment Reporting Requirements (Dec 2001) BY REFERENCE**

**52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/vffara.htm> or <http://www.arnet.gov/far/index.html>

**52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)**

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation

(1) by signing and returning the amendment,

(2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid,

(3) by letter or telegram, or

(4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

**52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)**

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**52.214-5 SUBMISSION OF BIDS (MAR 1997)**

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)--

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

**52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)**

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

**52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)**



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(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)

(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

**52.214-12 - PREPARATION OF BIDS (APR 1984)**

- (a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.
  - (b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
  - (c) For each item offered, bidders shall
    - (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and
    - (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule.
- In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- (d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.
  - (e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.
  - (f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

**52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)**

- (a) Bids must be--
  - (1) Submitted on the forms furnished by the Government or on copies of those forms, and
  - (2) Manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.
- (b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--
  - (1) Lump sum bidding;
  - (2) Alternate prices;
  - (3) Units of construction; or
  - (4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.
- (c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.
- (d) Alternate bids will not be considered unless this solicitation authorizes their submission.

**52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)**

- (a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.
- (b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.
- (c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.
- (d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.



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**52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**  
(Reference)

**52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**  
(Reference)

**52.216-1 -- Type of Contract (Apr 1984)**

The Government contemplates award of a **Firm Fixed-Price** contract resulting from this solicitation.

**52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)**

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE is as follows:

13.9 percent

GOALS FOR FEMALE PARTICIPATION FOR EACH TRADE is as follows:

6.9 percent

These goals are applicable to the entire Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on

- (1) its implementation of the Equal Opportunity clause,
- (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and
- (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the--

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Arizona.

**52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT--CONSTRUCTION MATERIALS (MAY 2002)**

(a) "Definitions." "Construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in

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the clause of this solicitation entitled "Buy American Act-Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) "Requests for determinations of inapplicability." An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) "Evaluation of offers."

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) "Alternate offers."

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

**52.233-2 SERVICE OF PROTEST (SEP 2006)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Wynona Rath, 615 S. 43<sup>rd</sup> Ave., Phoenix, AZ 85005\_.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

**952.233-2 SERVICE OF PROTEST (MAR 2002)**

(c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

**952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (AUG 2009)**

(a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror



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may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the Contracting Officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

**952.233-5 AGENCY PROTEST REVIEW (SEP 1996)**

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 48 CFR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

**52.236-27 - SITE VISIT (CONSTRUCTION) (FEB 1995)**

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) A site visit is currently arranged; please contact during normal duty hours:  
Name: Gary Lachvayder

Time & Date: 17 Mar 2010, 08:00 AM

Address: Olinda Substation, CA

Telephone: 605-602-2696

**DOE-L-1004 NUMBER OF AWARDS**

It is anticipated there will be 1 award(s) resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the government's best interest to do so.

**DOE-L-1006 EXPENSES RELATED TO OFFEROR SUBMISSIONS**

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or bid, or in making necessary studies or designs for the preparation thereof or for acquiring or contracting for any services relating thereto.

**DOE-L-1011 SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION (UNRESTRICTED)**

This acquisition is unrestricted and contains no set-aside provisions.

**DOE-L-1013 ALTERNATE PROPOSAL INFORMATION - NONE**

Alternate proposals are not solicited, are not desired, and will not be evaluated.

**WES-L-1005 MAILED OR HANDCARRIED BID/PROPOSAL INSTRUCTIONS (WAPA, FEB 1997)**

a. Mailed bids shall be sent to the address listed in Block 8 of the SF33 or SF1442, or Block 9 of the SF1449.

b. Handcarried bids shall be brought to the address listed in Block 7 of the SF33, Block 8 of the SF1442, or Block 9 of the SF1449.

SECTION L  
INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

c. Bidders shall place the following information on the outside of the envelope containing their submission:

Sealed Bid (IFB) or Proposal (RFP): DO NOT OPEN  
Solicitation No.: DE-FB65-10WG85330  
Due Date: April 6, 2010  
Time: 12:00 noon local time.



**SECTION M**  
**EVALUATION FACTORS FOR AWARD**

**WES-M-1001 ADDITIONAL EVALUATION FACTORS (WAPA, NOV 1995)**

a. Prices must be entered for each item. All extensions of unit-priced items will be subject to verification by the Government. In case of a difference between the unit price and the extension, the unit price will govern. In case of variation between the total shown on the bid and the total verified by the Government, the total (sum of the items) determined by the Government will be considered to be the bid.

b. If a modification to a bid based on unit prices is submitted which provides for a lump-sum adjustment to the total price, the application of the lump-sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro-rata basis to every unit price in the bid schedule.

c. When alternate items and/or performance schedules are set forth in this solicitation, the Government reserves the right to make award of the alternate items and/or performance schedule when, price and other factors considered, it is determined that the alternate items and/or performance is in the best interest of the Government.

**WES-M-1002 AWARD ON AN ALL OR NOTHING BASIS (WAPA, NOV 1995)**

Failure to bid on all the items in the solicitation will render your bid nonresponsive. The award resulting from this solicitation will be on an "all or nothing basis." Only one award will be made from this solicitation.

**WES-M-1008 UNBALANCED BIDS (WAPA, NOV 1999)**

The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the overall lowest cost to the Government even though it may be the low evaluated bid, or it is so unbalanced as to be tantamount to allowing an advance payment. For the purposes of providing for expenses incident to the initiation of construction and to discourage unbalanced bidding, the price for item number 0001, Mobilization and Preparatory Work, shall not exceed 5 percent of the total for the schedule. IF IT EXCEEDS 5 PERCENT, THE BID WILL BE REJECTED AS NON-RESPONSIVE.